

REMARKS

In the Final Office Action¹, the Examiner rejected claims 2 and 4-9 under 35 U.S.C. §103(a) as being unpatentable over *Satsukawa et al.* (U.S. 6,379,249, "Satsukawa"), and *Kami et al.* (US 5,853,324, "Kami"), and further in view of the game *Max Payne* (released on July 23, 2001) as evidenced by 'Kasavin's review' from www.gamespot.com and the game review retrieved from the www.giantbomb.com ("Max Payne"). Applicants propose to amend claims 7 and 9, cancel claim 8 without prejudice or disclaimer, and add new claim 10. Upon entry of this Amendment, claims 2, 4-7, 9, and 10 will be pending.

Applicants respectfully traverse the Examiner's rejection of claims 2 and 4-9 under 35 U.S.C. § 103(a) as being unpatentable over *Satsukawa* and *Kami* in view of *Max Payne*. A *prima facie* case of obviousness has not been established with respect to these claims.

"The key to supporting any rejection under 35 U.S.C. § 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. . . . [R]ejections on obviousness cannot be sustained with mere conclusory statements." M.P.E.P. § 2142, 8th Ed., Rev. 7 (July 2008) (internal citation and inner quotation omitted). "The mere fact that references can be combined or modified does not render the resultant combination obvious unless the results would have been predictable to

¹ The Final Office Action contains a number of statements reflecting characterizations of the related art and the claims. Regardless of whether any such statement is identified herein, Applicant declines to automatically subscribe to any statement or characterization in the Final Office Action.

one of ordinary skill in the art." M.P.E.P. § 2143.01(III) (emphasis in original). "In determining the differences between the prior art and the claims, the question under 35 U.S.C. § 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious." M.P.E.P. § 2141.02(I) (emphasis in original).

"[T]he framework for objective analysis for determining obviousness under 35 U.S.C. § 103 is stated in *Graham v. John Deere Co.*, 383 U.S. 1, 148 U.S.P.Q. 459 (1966). . . . The factual inquires . . . [include determining the scope and content of the prior art and] . . . [a]scertaining the differences between the claimed invention and the prior art." M.P.E.P. § 2143.01(II). "Office personal must explain why the difference(s) between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art." M.P.E.P. § 2143.01(III).

Applicants respectfully request that the Examiner reconsider and withdraw the rejection of the claims under 35 U.S.C. § 103(a) because a *prima facie* case of obviousness has not been established with respect to these claims. The differences between the claimed invention and the prior art have not been properly ascertained. Accordingly, no proper reason has been articulated as to why the differences would have been obvious to one skilled in the art at the time of invention.

Independent claim 7, as proposed to be amended, recites a computer program product including, "displaying circumstances . . . where the player-character and the enemy-character are located based on the changed time scale, wherein the **time scale** of the player-character in said displaying circumstances **remains unchanged** so that the **speed of the player-character appears relatively faster than the speed of the**

enemy-character and the speed of each one of the bullets fired from the enemy-character" (emphasis added).

The Examiner correctly states "Satsukawa and Kami . . . [are] silent with respect to . . . displaying circumstances . . . where the enemy character is located based on the changed time scale, wherein the time scale of the player in said displaying circumstances remains unchanged so that the player speed appears relatively faster than the speed of the enemy-character and the speed of each one of the bullets fired from the enemy-character." Final Office Action, pp. 4-5. The Office Action alleges that *Max Payne* teaches these elements. Final Office Action, pp. 5-6. This is not correct.

The Final Office Action alleges:

'Bullet Time' was incorporated into video games to provide a new character ability in which players could effectively slow down time and move around in a suspended time environment (see *Kasavin Gamespot review*). This gave the appearance of the player character to move faster than [sic] other characters (including enemy-characters). Through this process the player was able to appear relatively faster in speed and each one of the bullets fired from opposing characters (see *Giant Bomb review*).

Id. However, this characterization of *Max Payne*, as related by the *Gamespot* and *GiantBomb* reviews, is incorrect.

As Applicants discussed in Remarks filed 12/3/2008, the *Gamespot* review states "'bullet time' . . . temporarily puts everything in slow motion," further stating, "[in] Bullet time . . . all the action in the game is slowed, you can still aim as quickly as you can move your mouse," Emphasis added, *Gamespot*, second and third paragraphs. Thus, the *Gamespot* review clearly discloses that although the player may be able to aim at enemy characters in real time, the 'Bullet Time' in *Max Payne* puts everything, including

player and enemy characters, in slow motion. Thus, all of the action in the game is slowed. In response to Applicants' Remarks, the Final Office Action alleges

While the player's movement through the game field would be both adjusted to a slower state as observed by the applicant's representative it would still meet the limitations as required by the instant claims. **Bullet Time does leave the time scale of the player unchanged in the sense that the player's firing and aiming abilities remain unchanged.** Under such an interpretation, Max Payne's 'Bullet Time' does in fact alter the time scale while maintaining certain aspects of the player to remain unchanged so that the player speed appears relatively faster than the speed of the enemy-character.

Final Office Action, pp. 7-8, emphasis added. Applicants disagree. Even if the Final Office Action's allegation that *Max Payne* discloses the "player's firing and aiming abilities remain unchanged," which Applicants do not concede, such a disclosure does not constitute "the time scale of the player-character in said displaying circumstances remains unchanged so that the speed of the player-character appears relatively faster than the speed of the enemy-character and the speed of each one of the bullets fired from the enemy-character," as recited in Applicants proposed amended claim 7.

The Final Office Action further alleges:

Furthermore, expanding the speed difference to all aspects of the player character would only require routine skill in the art and therefore would be obvious especially in light of the state of the gaming art at the time this invention was made. As previously presented other games such as 'Diablo II' **have shown a freezing ability that may be fired against all enemy-characters.** In those circumstances the speed of the player character would remain unchanged while all of the enemy-characters would be slowed or appear slower than the player characters.

Final Office Action, pp. 7-8, emphasis added. Applicants respectfully disagree. The Final Office Action's characterization of "Diablo II" has the same deficiencies of *Max Payne* as discussed above. That is, a "a freezing ability that may be fired against all enemy-characters" does not constitute "the time scale of the player-character in said displaying circumstances remains unchanged so that the speed of the player-character appears relatively faster than the speed of the enemy-character and the speed of each one of the bullets fired from the enemy-character," as recited in Applicants proposed amended claim 7.

Further, the Final Office Action fails to address how the prior art of reference teaches, suggest, or makes obvious each and every element of claim 7. Specifically, the Final Office Action fails to address the previously claimed elements of "(k) measuring an elapsed time in which the computer system does not execute the changing of the time scale" and "(l) increasing the remaining time in proportion to the elapsed time in which the computer system does not execute the changing of the time scale." Accordingly, in the event that the application is not in condition for allowance, Applicants respectfully request that the Examiner issue a new, non-final Office Action which clearly asserts how the applied references teach or suggest each and every feature of each claim.

For at least the above reasons, *Max Payne* fails to teach or even suggest at least this claim element, and thus fails to remedy the admitted deficiencies of *Satsukawa* and *Kami*.

In view of the mischaracterizations of the prior art, as set forth above, the scope and content of the prior art has not been properly determined, and the differences

between the prior art and claim 7 has not been properly ascertained. Accordingly, no reason has been articulated as to why one of ordinary skill in the art would find it obvious to achieve the claimed combination, having only the benefit of the prior art. Therefore, no *prima facie* case of obvious has been established and the rejection of independent claim 7 under 35 U.S.C. § 103 must be withdrawn. Claims 2 and 4-6 are also allowable at least due to their dependance from claim 7. Independent claim 8, while of different scope from claim 7, recites elements similar to those of claim 7 and is thus also allowable over *Satsukawa, Kami, and Max Payne* for reasons at least similar to those discussed above for claim 7. Claim 9 is allowable at least due to its dependence from claim 8. Similarly, new claim 10 is also allowable at least due to its dependence upon claim 7.

CONCLUSION

Applicants respectfully request that this Amendment under 37 C.F.R. § 1.116 be entered by the Examiner, placing claims the claims in condition for allowance. Applicants submit that the proposed claim amendments do not raise new issues or necessitate the undertaking of any additional search of the art by the Examiner, since all of the elements and their relationships claimed were either earlier claimed or inherent in the claims as examined. Therefore, this Amendment should allow for immediate action by the Examiner.

Furthermore, Applicants respectfully point out that the final action by the Examiner presented some new arguments as to the application of the art against Applicant's invention. It is respectfully submitted that the entering of the Amendment

would allow the Applicant to reply to the final rejections and place the application in condition for allowance.

Finally, Applicant submits that the entry of the Amendment would place the application in better form for appeal, should the Examiner dispute the patentability of the pending claims.

In view of the foregoing, Applicants submit that this claimed invention, as amended, is neither anticipated nor rendered obvious in view of the prior art references cited against this application. Applicants therefore request the entry of this Amendment, the Examiner's reconsideration and reexamination of the application, and the timely allowance of the pending claims.

In view of the foregoing, Applicants respectfully request reconsideration and reexamination of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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